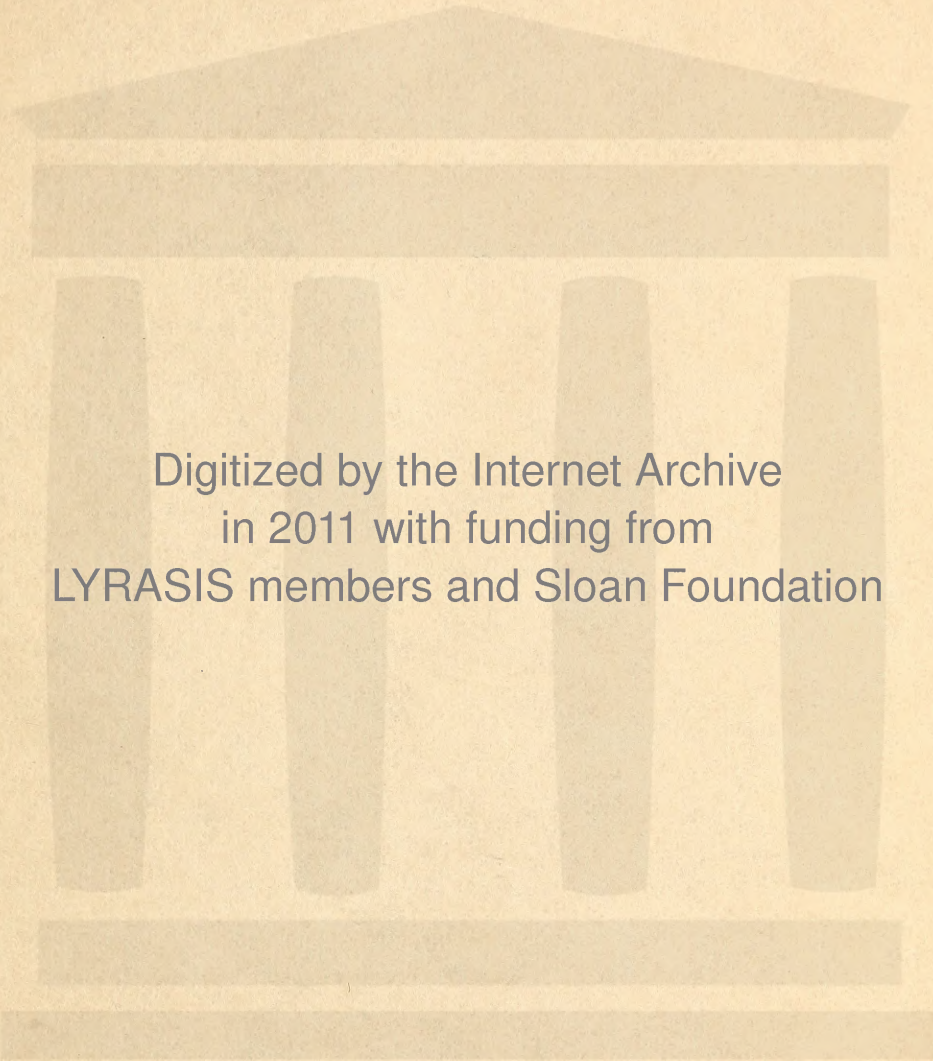


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ARGUMENT OF CAPT. W. H. DAY IN THE HAYWOOD-
SKINNER TRIAL, OCTOBER TERM, 1903,
WAKE SUPERIOR COURT.

By

W. H. Day



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ARGUMENT

OF

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ARGUMENT
OF
CAPTAIN W. H. DAY
FOR DEFENDANT.

If your Honor please, and you, gentlemen of the jury.

I crave your pardon and your patience, as you have my pity, that you have been detained so long in the hearing of this case. Mr. Pou very truly said in his opening argument that "you were the only involuntary actors here; that his Honor on the bench and the gentlemen on each side were volunteers, and it looked almost like a cruelty that the volunteers should so tax the patience of the involuntary participants." I will try to detain you not one moment more than the importance of the case demands.

Mr. Gilliam has been very unfortunate. It is the way of genius, always, to stand apart, despising the movements of ordinary mortals. While this case is being presented by his associates he absents himself from the court room and comes back and finds himself laboring for two long hours controverting a position that both Mr. Strong and Mr. Norris admitted was true. How are you going to deal with a man like that?

Mr. Gilliam's argument for two long hours yesterday was to show that there was malice in Ernest Haywood's heart; and Mr. Strong and Mr. Norris, with perfect frankness—but without genius—both said, "There is no evidence before you that there was any bad blood between the deceased and the defendant."

Is a man's life to be a plaything between a lawyer who is a genius and lawyers who plod? I ask you if here, in this temple of justice, human life is to be sacrificed to the caprice

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and whims of disagreeing attorneys? And I say to you they are as inconsistent in everything else as they are in this. Can you conceive why two lawyers, who, with frankness and truth, said that there was no evidence of bad blood between Skinner and Haywood should be followed by an associate who labors for two hours to convince you that there was? Is that dealing fairly with Mr. Haywood? Which of them are you going to believe? That much for the inconsistency of these gentlemen, and it is in keeping with their conduct from start to finish.

I am growing old. The shadows are turning for me. During my life, uneventful as it has been, it has been my fortune, or misfortune, to appear for defendants charged with capital felonies in over one hundred cases; and I say in my old age, after these years of experience, this is the first time that it has ever been known that the State of North Carolina failed to put one eye-witness on the stand when a man was standing for his life.

Gentlemen of the jury, I ask you to think of that. Here is a citizen, North Carolina in the beginning demanded his life, and North Carolina refused to confront him with a single eye-witness! Is the Goddess of Justice a Moloch who revels and dabbles her hands in blood, that they should shut out the light? Why should the people of North Carolina desire to cut Ernest Haywood off from any defense? They do not desire it. Unfortunately we have here a man prosecuted without a representative of the State. It is true that Mr. Daniel occupies the position of Solicitor, but at the same time he is an attorney of the prosecution, and his obligation is dual. There is no obligation on the State to convict; the obligation on the State is to show the jury the truth. The obligation of a prosecuting attorney is to convict, because he has been hired to do that thing. Now, I do not say it to Mr. Daniel's discredit, I know he is an honorable man, but, gentlemen, we are all weak and subject to the flesh, and

the wisest words—I do not mean to be irreverent—that ever fell even from the lips of Jesus, are embraced in the Lord's Prayer, where it says, "Lead us not into temptation." No man can serve two masters; it is impossible, and so I say that the State of North Carolina is without representation here. Therefore, have things been done that ought not to have been done in the name of Justice.

I am standing now for a man's liberty. I stood two days ago for a man's life. I am justified, and it is my duty to call your attention to these things. And I ask you, however honest a servant may be, can he serve two masters? North Carolina demands justice, North Carolina demands truth, and the prosecution here demands blood. Can these obligations be consistent? So you see, gentlemen of the jury, the defendant has a right to complain. North Carolina has no right to abdicate her crown and throne. I say that the aim of this prosecution has been conviction, and not the ascertainment of truth. You have seen it. Am I right?

Now, gentlemen, some man has said, and said with wonderful force, "Permit me to write the songs of a people and I care not who writes their laws." Why? Because in the songs of a people are found the expression of their glory and their fame.

I desire to call your attention to the words of Mr. Woodward, and to say that he is a North Carolinian; that his ancestors have brought credit to this grand old State and have been part of its glory and part of its history. Listen to what he says:

"Evidently he (Haywood) said something offensive to cause that young man Skinner to resent it. A man of spirit, a man of courage, when he is insulted to his face by a man who is his physical inferior, expresses his contempt in the same way that Mr. Skinner expressed it—slapped him in the face, struck him in the face with his closed fist, and turned away, 'I will leave you here.' That was the way it

was done when one did not wish to resort to the duello. If a man not regarded as a social equal sent a challenge he would not accept the challenge, but when the man insulted him to his face he would slap him in the face to show his contempt. Maybe Mr. Skinner expressed his contempt for a man that they have never shown you he ever had any relations with at all."

Gentlemen, of the jury, that is said about a member of a family which has shed lustre on North Carolina's history for one hundred and fifty years. "Slapping him in the face and treating him with contempt." Slapped whom in the face and treated whom with contempt, A free man. God in heaven! Can you conceive of a man walking up to you and slapping you in the face and walking off, saying, "I have disgraced him with contempt"? Can you conceive of it, that the thing should be said in a court-house in North Carolina, and said by the State of North Carolina—for they are claiming to represent the State of North Carolina—it is a humiliation too horrible for contemplation. "Is thy servant a dog that he should do this thing?" Gentlemen of the jury, when you walk through the Capitol to-morrow walk to the western gate and you will see there reared, until it almost kisses the heavens, a column of granite that honors itself in recording the glory of North Carolina's dead. On its faces are written: "The first at Bethel"; "The Furthest at Gettysburg"; "The Last at Appomatox." Think you that the descendants of those men will stand and be slapped, and be treated with contempt? Think you that you, who are good men, must submit to this indignity and turn your faces to your assailant and bless God that has permitted you to live? Do you think for one instant that if the doctrine taught here by Mr. Woodard, representing the State, or speaking for the State, is to obtain, North Carolina would have deserved that proud record? Think you that the men who will stand quietly and be slapped and insulted could

ever proclaim to the world that they were the foremost in the world's great battles for human freedom and human liberty? God in heaven! you blush for shame. What would you say when you read the proud record in one instance and hear the unearned slander in the other? Do you tell me that North Carolina is speaking when these calumnies are uttered? Ernest Haywood, in this capital city of North Carolina, the place of his birth, standing within a few steps of the spot where his ancestors are sleeping, to be slapped by Mr. Skinner, to be disgraced by Mr. Skinner, and then, like a whining hound, is to fold his hands and accept the opprobrium as a benediction.

Gentlemen of the jury, does anybody believe that the dead man ever felt that way? What record of wrong or of crime has he left behind him that they should come here and say that he would do this dastardly thing? I ask you again, what record of wrong-doing and crime has Ludlow Skinner left behind him that these gentlemen should come here and say that he, a brave man, a chivalrous man, should so far forget himself as to humiliate and degrade his brother in such a way as that?

If Mr. Skinner did what they say he did, then, by the gods he got what he deserved to get. Is there nothing in our associations of more value than life? Is life all there is to live for? Is there nothing greater than life? That is what they say. They are arguing to you that the most valued thing that man possesses is his life. God! It is a slander upon the dead, it is a slander upon the living; and I say to them here that, "By the doors of life and by the gates of breath, there are worse things waiting for men than death." Death? Who would not take death a thousand times rather than shame and infamy?

Am I standing before men on this jury who would stand and tamely submit to be disgraced on the streets of the capital of the State? What? Disgrace me and ask me to be

reasonable? Cover me with infamy as with a garment, make me a thing to be mocked and laughed at by my associates, then tell me to be reasonable and weigh with scrupulous and exact care the degree of apprehension I felt? They would make this man a poltroon, make him a slave, and then say to him, "Exercise calmness, become a philosopher and measure with scrupulous care the means you use to protect your honor and your life."

If Mr. Ludlow Skinner did what Mr. Woodard said he did, oughtn't he to have been killed? Is there a man before me on this jury that would have submitted to it? Is there a man within the hearing of my voice who for one instant would have tolerated it? Inflict that humiliation on you, and they would have heard you cry: "To hell with allegiance, I defy damnation!"

Gentlemen of the jury, it is the most pitiful, it is the most humiliating, it is the most degrading proposition that ever I heard in a great and important case. I want to read it to you again:

"Evidently he said something offensive to cause that young Skinner to resent it, etc., etc."

Let us see what the State of North Carolina is saying. Understand, this is the State speaking now. He has said something offensive. An offense to Mr. Ludlow Skinner can only be repaired by Mr. Ludlow Skinner having the right to inflict degradation on the person committing the offence?

Have you thought about it—that if a man is offensive, Mr. Ludlow Skinner has the right to degrade and disgrace and brand him as a coward? Just think about it. Is there a man in that jury box, is there a man within the hearing of my voice, is there a man on the face of God's earth who would let a man come to him, degrade him, disgrace him by slapping his jaws and then turn off? Where is Mr. Woodard? I wish he was here. I would ask him if such

things grow in the County of Wilson and he names them men? If they grow there, thank God, they are confined to that county alone.

Now, gentlemen of the jury, I am showing you what are the means by which they are trying to convict this defendant. Mr. Gilliam yesterday consumed the whole afternoon in trying to show that Skinner never put his hand to his hip pocket. Mr. Norris and Mr. Strong both admit it. Is there any use in arguing that point further? That is important. Now, let us see the evidence.

I beg you to remember that there was one witness who saw this fight that the State of North Carolina did not give to you, and we could not get—Miss Mattie Pace. I want to ask you why should they want to keep Miss Pace from us?

I read what Mr. Fuller says about writing to Mr. Norris to give us a statement:

“Q. With reference to the statement that you made to Mr. Norris and Mr. Strong, didn’t Mr. Norris write you a letter with permission to show it to the counsel on the other side? A. A letter?

“Q. Yes, sir. A. Yes, sir, and I afterwards wrote to Mr. Alf Haywood about the receipt of the letter.

“Q. But they didn’t give you permission for us to get your statement, did they? A. No, sir.”

Understand, at that time they were demanding Mr. Haywood’s life. Can you see why the State of North Carolina should object that a man, standing for his life, should know all the testimony against him? Can you conceive of it? A man standing for his life applies to whom? To his great mother, the State of North Carolina, saying, “Let me have the evidence against me,” and the State turns from him with, “No, no.”

Gentlemen of the jury, do you call this prosecution or persecution? Has Mr. Norris told you why he refused that

reasonable demand? Was Haywood's life a thing of so little value that they could play a game of chance for it? Was the question whether Haywood was to live or die to be determined by what amount of testimony Mr. Norris and his associates could suppress. Why did Mr. Norris refuse to let Mr. Fuller make a statement? Am I justified in saying that the voice of North Carolina has not been heard here, but rather the voice of persecution? It is the practice in all capital cases in which I have appeared, for the State upon request, to let the defendant examine its witnesses. And as this case is an exception to every case I ever appeared in, so it is an exception to that merciful rule. I want to ask you why, when they were demanding the man's life, they were refusing to disclose to him evidence upon which they demanded it?

And then they say that we criticise them. Ought they not to be criticised? Can you conceive of anything more horrible? Was anything in the history of the Spanish inquisition more shocking to the moral sense; confined, immured in a dungeon, tried without knowledge of the witnesses who were to testify against him, or their evidence? Could you then say that you had dealt fairly with that man? Gentlemen of the jury, I tell you that we have a right to complain; that our wrongs in this regard have been great and cry to heaven.

Can they excuse themselves on account of Mr. Fuller? He is a boy; acts from notions of exaggerated chivalry. He wanted to save Mis Pace from the inconvenience of the witness chair. But is a man's life worth no more than the blushes of a woman? God in heaven! Are they willing to give a life to eternity to spare a woman's blushes?

This is what we have met with in every stage of this drama. "What? Did they have more consideration for Miss Pace's blushes than they have for this man's life," I hear you say? That being so, gentlemen of the jury, you

and I and every man who moves in our spheres of life would feel that human life was worthless when the anointed are not spared. I ask you to take this proposition and think of it. Here is a man standing for his life, begging of the State of North Carolina, "Let me know what the witnesses say and what I shall answer"; and he is told, not by the State of North Carolina, thank God; not by that old mother who loves and protects us, but he is answered by private prosecution, "You shall not have the evidence." And they come here and tell us about their liberality and their generosity in their dealings with this man.

"Truth crushed to earth will rise again,
The eternal years of God are hers."

This witness, that they would not let us have, had, fortunately, spoken in words more eloquent than those spoken by any witness heard here, and had told all to Jones Fuller. What did she tell? Not what Mr. Gilliam said he was going to show you. Why did Mr. Gilliam misquote? Why didn't he repeat what Mr. Fuller said: "There is a fight; he is going to shoot him"? Don't you know that if his Honor had not ruled what she said at the time of that occurrence should be heard here, all that we would have heard from Mr. Fuller would have been, "He is going to shoot him." And these gentlemen, representing the majesty and dignity of North Carolina, were consenting to absence of a witness when they knew she had said, "There is a fight; he is going to shoot him." Can you think of such a thing? They objected to the last part of it and wanted you to hear nothing but the cruel, hard, false expression, "He is going to shoot him." An expression by itself as false as the hell above which we stand. The witness said, "There is a fight; he is going to shoot him."

Now, gentlemen of the jury, don't you think that we have

a right to complain of these gentlemen? They were going to send this man before you—you, sworn to decide this case on the evidence and the law—with nothing but that expression, "He is going to shoot him." What could the defendant have done?

What else do they offer? They offer nobody that saw this transaction except Jones Fuller. If they could have kept Miss Mattie Pace off the stand and then sealed Jones Fuller's lips with "He is going to shoot him," is there a power short of God Almighty Himself which could have saved Haywood's life? But when the truth comes, the whole truth, and nothing but the truth, what does it mean? Innocence. Then to escape its effect, Mr. Woodard would convert us all into curs and cowards—that is all.

Mr. Gilliam has spoken to you four hours, and upon what evidence has he asked you to convict this man? The evidence of the parties who saw the beginning of this difficulty? Not at all. But upon the evidence of the men who told you that they knew nothing, saw nothing until the second shot was fired. Was it possible for the prosecution to have an eye-witness to this transaction? Yes. Did they get them? No. Why? The answer is, they were afraid of them. Afraid they would lie? No! God in heaven, didn't they bring Sauls here, that paragon of perjury, to take a man's life? Is the sanctity of this temple, this altar to be spared the desecration of a perjurer? If so, why did they bring Sauls here? If they could hang Mr. Haywood on Sauls' testimony, won't you free him on the testimony they have suppressed?

This is not the State of North Carolina, I say to you. It is an unholy vengeance crying, Pursue! pursue! which knows no law, knows no mercy, knows no pity, knows nothing but gratification of its hellish appetite. I say they can trust Sauls, who came here covered with infamy as with a shield, but they were not willing to take from the mouth of

the boy, Thomas, the simple words of truth, that mercy and justice may obtain together.

Counsel reads testimony of Walter Thomas, as follows:

“Q. Now then, just go on and state what you saw, if you saw anything, after you stopped your wagon out there? A. While I was standing there I saw one man come out of the court-house and the other come out of the post-office, and they met at the south steps of the post-office, and while I was standing there they were talking, but I couldn't hear what they said; and the man that came out of the post-office knocked the other man down and he stepped back about ten or twelve feet and this man got up and shot him.

“Q. Now, which man was it that shot the other? You saw one come out of the post-office—

“MR. DAY: He said the one that came out of the office.

“BY MR. HARRIS: Q. If you saw anything further when the man stepped back—if you saw him do anything—state what he did? A. He put his left hand back here towards his hip pocket under his coat.

“Q. About a short time before the pistol fired? A. Pistol fired about the time he had his hand under his coat.”

Gentlemen of the jury, why did not the State of North Carolina offer you this plain, simple, pathetic truth? Haywood is a North Carolinian, and North Carolina owes to him the same tender consideration that a mother owes to her son. Why did they not let this exculpating truth come out, here, where a mother is dealing with her child? Have you thought about it? Why? Do they want more than justice? If they do not want more than justice why didn't they put that little boy on the stand? Whom could he hurt? Could he hurt the State of North Carolina, could he hurt the people of this State? No, no. But for humanity's sake—I blush to say it—he would have stayed the hand of vengeance. That is all.

Did you ever hear anything more pathetic than the story

of this little boy, and, gentlemen of the jury, from the child comes the truth. What did our Savior—not a God of vengeance, but the sweet, meek, lowly, humble God of mercy and love on earth—what did He say when He wanted to typify what was true and what was pure? “Except ye become as little children ye can not enter the kingdom of heaven.” Why did they want to silence that voice? Why did they want to put out forever that light of truth and give you instead Sauls—Sauls, who comes reeking and shrieking with the slime of a life he has made infamous. Doing what? Crying not for mercy, but for blood, for vengeance. But, gentlemen of the jury, I do them the credit of saying they have abandoned him, and if you have noticed they have not alluded to his testimony in this argument—and he is the one eye-witness, they say, who saw the transaction.

Why should this little boy tell a lie? Do they say he has been corrupted? Can't we say as well that Sauls had been corrupted? What motive could he have? This little fellow came here with no polished words, nothing but the plain, simple truth, the story of a little child. Here it is: “One man came out of the post-office and one man came out of the court-house; they stood there talking; one man knocked the other down and the man that knocked the other down jumped back and put his hand under his coat here; the other man got up and shot him, and my mule ran away.” Is that not a story marked with truth? That is the story of that little boy. They didn't give you that witness. Why? Did they want to hang Haywood if he was not guilty? They believed Sauls; why couldn't they believe the boy? Is the boy sustained? Yes, he is sustained. By whom? By Miss Pace. She says there was a fight. So the boy is telling the truth. Then, how do they try to meet this plain, simple story? By asking questions of a dozen people if they saw a wagon in the street. What did they want to know that for, if they did not want to try to make you think that the boy was

lying? How could anybody see the wagon when the mule turned and ran before the crowd gathered? Is the boy telling the truth? Who else saw it? Simms.

Just there I want to make this comment. Did you see how fast and rapidly they have changed their position? They started out by saying, in their cross-examination, that Simms was utterly unworthy of any credibility or respect; and now they say, "Gentlemen of the jury, we discovered this pink of perfection ourselves and claim all the credit."

Why did they change? When they were discrediting him they were asking for a verdict of murder in the first degree, and Simms said there was a blow. They cross-examined him as never a man was cross-examined before. Now, gentlemen of the jury, when a gentleman is on the witness-stand speaking on his oath, and you ask him, "Are you frank?" What do they ask him? What do they mean? They would have destroyed Simms by that cross-examination if he had not come here backed by the best men in the State? They could not attack him successfully. On cross-examination they asked him, "What about this conversation you had with Mr. Busbee and Mr. Johnson about employing you?" "What conversation did you have with Dr. Skinner about employing you?" Every word and every phrase is an attack on his integrity. And when they change and no longer ask for this man's life they come and say, "This man makes out our case." I hope it does. Did you notice that they never put their strongest witnesses on the stand?

And who else do they say they make their case out by? Willis Briggs. They put Willis Briggs on the stand in the habeas corpus proceedings, but they didn't put him on here. Now they change, and when they are driven from every point, they say that Willis Briggs and Bob Simms make out their case. How much better if they had said: "Mr. Simms, you saw it, go on the stand; Briggs, you saw it, go on the stand; Hocutt, you saw it, go on the stand;

Miss Mattie Pace, you saw it, go on the stand," and so with every human being who saw it. How much better it would have been. Why didn't they do it? Is little Walter Thomas sustained? Yes. By whom? By Miss Mattie Pace. First, because she cried out, "There is going to be a fight; he is going to shoot." Now, little Walter Thomas says there was a fight and he knocked him down and he did shoot him. But they say he is mistaken. Isn't Miss Mattie Pace mistaken if Walter Thomas is mistaken? They both go together.

By whom else is Walter Thomas sustained? By Simms. What does he say? That he was there talking to Mr. Briggs—and there can be no controversy about that—and Skinner knocked Haywood down and sprang to the grass plot and the first shot was fired. Isn't that exactly what the little boy said?

What else does the little Thomas boy say? "He put his hand on his hip." What does Schmitz say? Well, they say that Schmitz is a liar, and that he is bound to be a liar, because he is a dude. Gentlemen, I would hate for all dudes to be liars, because what would become of my friends, there, Mr. Woodard and Mr. Gilliam, both of whom I am very fond? I believe that Mr. Strong wouldn't come to the measure of a dude, and we would have to acquit him. Mr. Woodard, since he has become young again, is coming fearfully near it. So, gentlemen of the jury, he is a dude, and you can't believe a word he says. Gentlemen, isn't that a crime? He is a dude! Think of the crime he has committed! He is a dude! He wears decent clothes. Why, they will believe you are a dude; you part your hair in the middle; they won't believe a word you say; you had better not part your hair in the middle. And Walter Daniel is gone too; they say that he is not worthy of credit. Why? Well, he is a dude. I confess to you, gentlemen of the jury, that is terrible to get over. Oh, I would hate to think every

man who is a dude is a liar—more for the sake of those gentlemen than anything else. In their anguish they will cry out more bitterly than Jacob did, when they had taken two of his boys: “Reuben is not, Simeon is not, and now they will have Benjamin; all these things are against me.” That wail, was not so pitiful as the wail that comes up from North Carolina: “This man (Schmitz) is not to be believed, because he wears a clean shirt.”

But they can’t urge that against the little sun-burned boy, Walter Thomas. There is no dude, but the free American intelligence gotten from the free sun and the free air. They haven’t got him.

What is Schmitz’s crime? First, he wears good clothes; second, he wears a long-tailed coat; the next is he wears a clean shirt; the next is, he wears a scarf pin; the next is, he parts his hair in the middle—and that is something. But the deep damnation of his taking off is what? That Governors of his State say he is a man of good character; that Congressmen of his State say he is a credit to his community; that men of high places are glad to take him by the hand and call him friend.

Can you conceive the solecism of a man of Schmitz’s character riding five hundred miles to perjure his soul, and for what? For a few dirty dollars, which, if he has them for being here, when he dies will melt and run out of his pocket in hell? Just think of it. That man who comes backed by Governors, by Supreme Court Judges, by members of Congress, by lawyers, by merchants, by gentlemen of different walks of life, riding five hundred miles to commit perjury, and if he has done it, he has done it for a few dirty dollars. Do you believe it?

Now, what do they offer against him? I want you to think about it. Do you believe that his Honor on the bench there; that the gentlemen representing the State; that the

gentlemen representing the defendant, can carry from the State of North Carolina a more magnificent certificate of character than Schmitz brought here? If there was a man going out of the State to-day to testify in a case where his character might be attacked, wouldn't he consider himself fortunate, indeed, if he could carry away a certificate of character such as Schmitz brought here?

And yet they say he is not to be believed, because to do that is to give back to freedom one of your own brothers, and not to believe him would put upon him a convict's stripes. Can you conceive any other reason why they should attack him?

Whom do they bring here to attack him? Folger and Guy Wilson; and, in God's name, who is Folger, and who is Guy Wilson? "A falcon, towering in his pride of place, was hawked at by a mousing owl and killed." Gentlemen, when character, such as this man has brought here, can be broken down by such men as they have brought here, then the time has come when the "sheeted dead" ought to leave their resting places and cry shame upon their degenerate children.

Let Schmitz go; but who goes with him? Miss Mattie Pace. Because he swears to a fight, as she did, and how did he know she was going to swear that way? They had her mouth shut. I reckon he is not only a liar, but, God, he must be a conjurer. Ain't you gentlemen ready to say he is a conjurer? Then, I say, if he is not telling the truth, how did he find out what Miss Mattie Pace would say? They may say that from the mouth of this man came lies; they may say that from the mouth of Simms came lies; they may say that from the mouths of other witnesses came lies; but can they say that about Miss Mattie Pace? He might have found out what the little boy, Thomas, was going to swear to; he might have found out what the other witnesses were going to swear to; but how was he to find out what Miss

Mattie Pace would swear to? And if he tells a lie, what are they going to say about Miss Mattie Pace?

I want you to remember that we are dealing with a human being's liberty, and these are the instrumentalities, and these are the witnesses with which they are trying to obtain a conviction. They say Schmitz is a liar, because he couldn't see what he testified to from the Citizen's National Bank Building. How about your man, Sauls, who stood there right at the corner, and says he saw the fight. True, you have abandoned Sauls—thrown him over—but how could Sauls have seen this and another man there not have seen it? There was no trouble for Sauls to see it from the telephone pole. For some incredible reason the whole law of nature is interfered with, and God Almighty has given to one man a certain capacity and denied the same capacity to another. It is time to do it when the State of North Carolina shuts off a man from evidence when he was being tried for his life, for chaos has come again.

How else do they attack his character? There is one thing that occurs to me. Baltimore has 600,000 people, I believe, and they went there to try to find men to attack it. But they couldn't find but three men to give Schmitz a bad character, and these men wouldn't go on the stand when they got here. How did it come that they couldn't get somebody else in Baltimore? Gentlemen, I hope it isn't so; I hope you gentlemen are not associated with Guy Wilson and those fellows in Baltimore. God knows, didn't your ambition soar any higher? You, reputable lawyers, men of good reputation in the State in which you live, couldn't associate with any better people? Gentlemen of the jury, our men of North Carolina must be dwarfing. You went there in that city of 600,000 people, and you couldn't find anybody to associate with but Guy and Folger. "Oh, it was pitiful, in a whole city full, friends they had none." They couldn't find but three men, and they came here. It is said that a

lion will turn from the presence of a woman and fly. A woman is typical of truth. When they came here they were struck with the grandure of this proceeding and the augustness of this tribunal, and heard the voice of Maryland's Congressmen and Maryland's Governors and Maryland's Judges, and they knew they had told the truth and they knew that they themselves were going to lie. They became appalled and sank out of sight. You can take either horn of the dilemma you want. Take the flight of those cowards—

MR. WOODARD: If your Honor please, is that proper?

THE COURT: There is no evidence of that. You can comment on the fact that they brought them from Baltimore; you can't call them liars and cowards.

CAPT. DAY: I beg your pardon, and I beg their pardon; you are living gentlemen, but God in heaven, has it ever struck you that to two people in this State there is no life? His gray-haired mother, and—

MR. WOODARD: I object to Capt. Day's speaking of his mother when he deliberately called me down for mentioning her.

THE COURT: There is no evidence here that shows he has any mother.

CAPT. DAY: Well, your Honor, he is unfortunate if he did not have one.

Whom else did they bring? They still don't want the truth to come out. They go down to Southern Pines and they bring Capt. Clark, and he tells you that Schmitz told more stories about this than are found in the fifteen volumes of the Arabian Nights, with a story on each page.

Who is Capt. Clark? A man who came here at the last Court and swore to Schmitz's good character. Why does he change? Here upon this stand, in the presence of that bench, and under the scrutinizing eyes of God Himself, he swore that Schmitz was of good character. He comes here now and says, what? "I, Clark, have lied." Why did he

lie? Why this change over the spirit of the dreams of this man from Southern Pines? Why? He had heard the double statement of this witness, Schmitz, when he swore here, and yet he said he was a man of good character. Schmitz had made his statement in Southern Pines to him, and he came here on the stand and swore before the judges, after he had heard both statements, that Schmitz was a man of good character.

MR. DANIEL: I don't want to interrupt you, but Capt. Clark said that he didn't hear his statement.

CAPT. DAY: He said he didn't hear him testify, but he heard both statements.

THE COURT: He said he had not heard both statements when he swore to his character.

CAPT. DAY: No, your Honor, he heard the statement down at Southern Pines, and he knew he (Schmitz) was coming here as a witness for Haywood.

THE COURT: He said he hadn't heard both statements when he swore to his good character.

CAPT. DAY: Well, let us take the other man who said he heard both statements—Oslin. He heard both. Could you go on the stand and swear to the good character of a man who had told you a lie? If Schmitz told him one story in Southern Pines and he heard his statement here and then went on the stand and swore to Schmitz's good character, what is that man's word worth?

What does this weigh against the reputation given by Maryland's good and great men? Do you believe that a man who has lived such a life that Governors, and Justices of a Supreme Court, and Congressmen testify to his good character, will lie?

Who is Clark? Who is Oslin? Who ever heard of either of them before? Who are they? When this man comes here with his character proved by all of those people, and

those men come here whom we don't know anything about, who are you going to believe?

Is his testimony supported? Miss Pace would swear to the same thing if we could get her. Little Walter Thomas swears to the same thing.

Who swears against it? Sauls—Sauls alone. I am discussing Schmitz; if he didn't have his character sustained by witnesses, who stamp him as a man of truth, he is corroborated otherwise.

He is corroborated by Ned Barnes. Ned is a negro, and it makes an Anglo-Saxon proud to think that a man in his humble walk in life can deserve such a character. He comes here with his character vouched for by whom? By Justice Connor, an ornament to your Supreme Court and to our State; by Charles B. Aycock, your Governor; by George B. Green and by others. Now, when this evidence comes, the only adverse criticism that can be made about it is, that the man may be mistaken, but he can not lie; and I mean by lying, that he can not say what he believes not to be true.

Now, what does he say? Does he say what Mr. Gilliam tells you he said? Not at all, and that is the unkindest cut of all—the persistent misquoting of evidence by Mr. Gilliam—when we reflect that he is appearing against a man fighting for his own liberty, he ought at least to quote the evidence correctly. What did he say Ned Barnes said? That he heard angry words.

Counsel reads from testimony of Ned Barnes:

“Q. How close was your carriage to the curbing? A. Right up to the curbing of the sidewalk.

“Q. How long had you been there before the difficulty occurred? A. It happened right away, right after I got there. I tucked the robe on my right side. As I heard some one speak I looked; that time a lick passed.

“Q. Who struck the lick? A. Mr. Skinner.

"Q. Had you noticed them before you heard somebody speak? A. No, sir.

"Q. What attracted your attention? A. By hearing some one speak."

I called Mr. Gilliam's attention to that. He was arguing what his Honor told you there was no evidence of, malice on the part of Haywood, and he put into Ned Barnes' mouth the words, "that he heard angry words." I got up and interrupted him, and he said he was arguing. How dare he argue those words into Barnes' mouth?

(Counsel reads from evidence of T. H. Wood.)

"Q. How near to them did you pass? A. I passed right by them."

"How close to them? A. I don't know; in about two or three feet."

"Q. When you passed what were they doing? A. Standing talking."

"What was the tone of their voices? A. Oh, it was gentle."

Now, gentlemen of the jury, here comes one of those thrilling propositions again, which emphasizes the fact that the voice of the State of North Carolina is not heard in this matter. Here is a witness that the State examined, and the man said that the tone of their voices was gentle. Ned Barnes said that he heard voices; Mr. Gilliam distorted it into angry words when one of their own witnesses said the tone of their voices was gentle. Out of the mouth of their own witnesses shall they be condemned. What right has the the State to come here and put in the words, "I heard angry words," when Ned Barnes said that he "heard words?" And their own witness testified that the conversation was in a gentle tone. Is that the way to deal with a man? Is human life worth no more than that? I ask you where, in the name of God, where are we drifting? Well, may Mr. Gilliam be alarmed at the drift of society, if these things be done in the

State of North Carolina. I say that would not be pardonable, if it were done by the defense to save a man's life. What must it be when it is done by the State to take a man's liberty?

What did Ned Barnes say he did? He said he turned his head, and Mr. Skinner was going off with his right hand on his hip, and the pistol went off. How many men might have made that mistake about which hand? Take the State's witnesses, they put Skinner on nearly every square foot in front of the postoffice. Are they lying? This little boy testified that when he jumped off he slipped his hand to his hip in this position, and the shot came.

This defendant is not what Mr. Woodard would have him to be, a man who would stand up and have his jaws slapped. I am talking about Earnest Haywood, as a North Carolinian. I walk up to you in a public place and slap your jaws. Don't I know that nothing, save God himself, can protect you from killing me if you can? Mr. Skinner knew that; he had a pistol in his pocket, and there is nothing more probable than that he was trying to get it. Is there any trouble in believing the little boy's story? He said Mr. Skinner had his left hand on his hip.

They try to distort things and say that the first shot didn't hit him, but they put Harrington on the stand, and he said the first shot did hit him.

You may talk about law, and read homilies, and all that, but if a man walks up to you in a public place and hits you and jumps back like that, if you have a pistol you are going to use it. And let us take the other side of it: If you walk up to a man in a public place and slap him, don't you know he is going to shoot you? How long would a man live who treated you so on the streets of Raleigh? When he struck him, he knew that Haywood would shoot him; he knew he would have to protect himself, and he sprang back to get his pistol, and Haywood's pistol went off.

When Haywood was down he couldn't shoot him, and his idea was to draw his pistol while Haywood was on the ground to cover him. But the mistake made was that he had an overcoat on, and an under coat, and when he put his hand back to reach his pistol, he put it between his overcoat and his under-coat; that is the reason he didn't get his pistol. Who says that? Little Walter Thomas; and just as you can not "gild refined gold nor paint the lilies," you can not decorate the truth. You can not train truth. It comes purer from the most untrained child than any source under heaven. What did he want to tell a lie for? He could not lie.

Gentlemen of the jury, here are the clothes. If you remember, in the Bible, after the resurrection of our Saviour, one of the disciples said, "I will not believe unless I can put my hand in the wounds." Take that coat. The man was shot here. Tell me how he could have been shot through his coat there, and through his vest there, and his overcoat be shot through the lapel twice here? Is there any way except the natural way, with his hand behind him? Here is the overcoat, shot through right there. What else? It went into the skin in front of the hole in the thoracic cavity, and when a man is turned that way it would happen just like that.

Do you want anybody else to testify about it? Let us see. The witnesses who saw the blow struck were, Schmitz, Hocutt, Thomas, Simms and Barnes. Simms didn't say there was a struggle; he said there seemed to be. On page 300 he says, using this expression: "I can't say exactly they were pushing at each other; they had their hands out this way." Now where does Simms say, in fact, it was a struggle? He said it looked something like a struggle, and then he modifies it, "I can't say exactly they were pushing at each other."

Have we lived all these years for no other purpose, than after a struggle of two thousand years for human liberty, that a man's life is worth no more than the tricks of an astute law-

yer? Is it possible that the State of North Carolina should have only in view the crushing of one of her citizens, whether guilty or not? Why couldn't the gentleman be as broad as the old State is, in her magnitude and grandeur? Why couldn't they grow to the high responsibility of the place they are occupying and look out upon North Carolina and say: "We are as big as the State, and that means we are as grand as truth itself?" A man ought to grow under such circumstances as these. Just think about it—that men will come here and exercise their ingenuity to distort language to deprive a man of his liberty, and that, too, in the name of this grand old State! What? Is their mission to distort words to bear them out in their contentions?

Take Ned Barnes. Now, gentlemen of the jury, they denied in the beginning that there was a fight. They have surrendered that position, and just the very second that they surrendered it they tried to take up Simms, and said: "Oh, we discovered this gentleman, you didn't find him, we raised him and we know he is spotless and pure." Just that second they couldn't break him down by distorting his testimony; they thought they could work wrath and wraith upon my client, by standing by Bob Simms. Yes, they stand by him, as the Devil stands by holy water, "trembling and fearing." They can not overcome him and they try to distort his words. They fling to the winds the negro Harrington, because he says the first shot hit Skinner. He is bound to be mistaken they cry. Why? Because they can't make even the semblance of guilt against Earnest Haywood, unless the second shot struck him. Harrington isn't any more mistaken than Jones Fuller. Jones Fuller testified that he saw both shots. Can you put Skinner in any position where the shots would go through him as found, in the position Fuller described? The only turn he made in the street, he says, was to turn his head around just a little. I defy them to do it.

But Harrington is a State's witness. Oh, yes, but any-

body is to be believed when they convict him, and nobody is to be believed when they excuse him.

(Reads from testimony of Jones Fuller.)

"If you saw any part of this homicide, please state it. A. My attention was attracted to the street, just about the time, or just in time, to see the first shot."

"Q. Did you see the first shot? A. Yes, sir; I saw the flash of the pistol."

"Q. Where was the defendant standing? A. He was standing on the parapet, just this side of the south steps of the postoffice, close to the building, close to the walls."

"Q. Did you see the person at whom he was shooting? A. Yes, sir."

"Q. Where was he at the time you first saw him? A. He was about one or two steps off the curbing."

"Q. Where? A. In front, almost in front of the south steps, a little to the south."

"Q. Was he on the sidewalk or in the street? A. In the street, just about a step or two steps off the curbing of the side walk."

"Q. What did the man that was being shot at do after the first shot? A. He continued a little south possibly, across the street, in a walk, I don't remember that it was unusually rapid, and then when the second shot was fired, or possibly it was before the second shot was fired, I think he turned slightly to the north. He was going almost straight across the street and turned a little more to the north about the time of the second shot, and then he wheeled around and fell on the car track."

"Q. Do you know how far he was from the edge of the sidewalk at the time of the second shot? A. I think he must have been just about the west rail, that is, the rail on this side of the street car track."

"Q. At the time of the second shot? A. Yes, sir; and I

think he got across the other rail and turned and fell, so that his forehead struck about the rail or a little over this way."

"Q. Will you describe after the first shot the manner of the deceased? A. After the first shot he made a slight turn to the north; in other words, I think, if he had gone straight, he would have struck maybe below the middle entrance of that building that Mr. Denton is in, and after the first shot he turned so (indicating), but if he had gone straight he would have landed about the division wall between that building and the Henry building, and then after the second shot he made a movement with both hands."

There is Mr. Fuller saying that he was going from Haywood all the time, and until he made that slight turn, the ball would have hit him directly in the back. Could he have hit him in the side, in God's name? See, they are taking every strained position they can to convict.

Now Mr. Gilliam staked his case on the evidence of Briggs and Austin. You won't believe me when I read Briggs' testimony. You recollect Mr. Gilliam said that Mr. Austin said the second shot hit him, and it hit him as he turned his head in that position. Listen to what Mr. Austin said. And the pitiful part of it is, that this great State is misquoting testimony; for what?

"Q. You say Mr. Haywood was where his Honor is; the other when he was facing northeast, had his back directly towards Mr. Haywood, is that it (illustrating)? That is exactly the position Mr. Skinner had at the time the second shot was fired? A. Yes, sir."

God in heaven, how could the second shot have hit him? Would you believe your ears when they come here and quote Austin as saying that the second shot hit him? It is the same thing with Jones Fuller; Jones has Skinner's back to Haywood all the time. Fuller was in the hotel, not seeing and not understanding; and this witness (Austin) was on the ground and understood it.

(Reads from Austin's testimony.)

"Q. And then he circled up this way? A. Yes, sir."

"Q. Due north? A. No, not facing due north, I think."

"Q. Was he facing this way (a little east of north)? A. I think you have got it about right, sir."

"Q. You say Mr. Haywood was where his Honor is; the other, when he was facing northeast, had his back directly towards Mr. Haywood—is that it (illustrating)? That is exactly the position Mr. Skinner had at the time the second shot was fired? A. Yes, sir."

"Q. And that is the position Mr. Haywood had—back where his Honor is, when the second shot was fired? There ain't any doubt about that, is there, Mr. Austin? A. He was going further north than you have it."

Now, gentlemen of the jury, Mr. Gilliam labored here for two hours misquoting the evidence of this man to prove that he shot him in the side. Now don't you see that if the second shot hit him, it would be right square in his back?

Let us see something else. Mr. Woodard said five times that his back was to him at the second shot, and that it was unnecessary—that second shot—and he was arguing that the first shot struck him. Mr. Gilliam turns the whole thing around and makes it the second shot. Those gentlemen of the prosecution won't stay in here, they don't know what each other said. They have no case on earth; they are just slopping around and trying to take this man's liberty away from him.

Mr. Woodard says in his speech:

"If, as I told you this morning, he killed this man wilfully; if he stood there and shot this man, as we contend, when his back was turned, when he was going from him, when he was in no immediate danger, when he had no reasonable apprehension that his own life would be taken, or that serious bodily harm was about to be done to him; if, as I say, the life of his fellowman was taken under such circumstances, then the law, gentlemen, and not you, says that the

defendant Earnest Haywood was guilty of murder in the second degree."

Mr. Woodard talked about the uncontroverted witnesses of the State saying so and so. There is not a scintilla of evidence to show that the second shot hit him except the evidence misquoted by Mr. Gilliam. You can't keep the prosecution together. One says the first shot hit him, and then comes Mr. Gilliam who insists that it was the second shot that hit. The trouble is, that Gilliam is a good lawyer, and he knows that the second shot don't amount to a row of pins if he was struck by the first shot, so he is trying to show you that the second shot hit him. His Honor will tell you that if the first shot hit him, the second shot don't make a God's bit of difference.

Can a man justify himself for misquoting testimony when a man is on trial for his life? Not a bit.

Again Mr. Woodard says in his speech:

"We have offered to show you by witnesses as credible as any that can be brought to establish any fact that Earnest Haywood shot this man when his back was turned."

Mr. Woodard argued that he was shot with his back turned and that it was the first shot. Mr. Gilliam argued that he was shot with his side turned and that it was the second shot. They have had seven months to think over it, and they asked first for murder in the first degree, and then for murder in the second degree, and now they ask for manslaughter. Like Juno of old, who, after wearing out her immortal horses in the search for enemies to fight against Troy, disappointed in her hopes and realizing that her vengeance would be defeated, cried to Jupiter: "Burn Corinth, raze Athens, take all I have, only let me see the smoke arise from the palaces of Priam."

The prosecution asks for vengeance, not for justice. It sickens. One can hardly contain ones-self.

Mr. Woodard also said in his argument:

"It does not make a bit of difference, gentlemen, whether

it was the first shot that killed him or the second shot that killed him, if you believe Mr. Jones Fuller's statement. Why? Because he was going away from him—going away from him."

God in heaven, did you ever hear such a thing? It didn't make any difference which shot hit him? Mr. Woodard will regret that, maybe, some time in his life.

But if Jones Fuller is right, it wasn't Haywood's shot that hit him at all, because Mr. Haywood didn't hit him in the back, the bullet that hit struck on the side.

This is what they offer in exchange for what? First, life, and in the second place, freedom. Don't you think they are carrying it too far? That is why I say it is wrong that the State of North Carolina is not represented by a Solicitor who is only getting twenty dollars. I mean no disrespect to Mr. Daniel. He is a good man, an honorable gentleman. But no man can serve two masters. No man is of higher integrity than Walter Daniel. But he can't do that. I say there is a great necessity to have the voice of reason and justice to speak for the State, not the voice of prejudice and the voice of malice of this prosecution. I am showing you the harsh measure they would mete out to Ernest Haywood.

And just before I get to that, I want to call attention to the fact that it has been stated that "this fellow Hocutt," as they term him, said if they had money, what they could do against Haywood. If Haywood had not had money what would have become of him, against three mercenaries from Baltimore? God in heaven, have you imagined what would have become of one of you, if this persecution had been levelled against you? Consider Mr. Woodard's contention. If one of you, for some cause or other, had wronged Mr. Ludlow Skinner, he must not come down on a level with you, because it would disgrace him, but to humiliate you and degrade you he would walk up to you on the street and slap your jaws, and then he would turn off and say, "I have set-

tled you"; and if you, in your indignation at the stigma he had put upon you, had done what Ernest Haywood did, and they turned loose this prosecution on you, where would you be? Have you thought about it? Have you thought what your condition would be if this powerful prosecution was launched against you, the voice of your old mother State hushed and denied the right of interceding for you?

Again, on page 1118 of his argument, Mr. Woodard says—and that reminds me, "Oh, that mine enemy would write a book." He has written it; we have got him down where he can not deny.

(Reads from Mr. Woodard's argument.)

"Gentlemen, let me ask you this question: Suppose there should be some discrepancies as to the material facts in the testimony of Jones Fuller, the testimony of George Wilson, the testimony of Mr. Simpson, the testimony of Walter Thompson, but as to the main facts of the killing of Ludlow Skinner and the absence of necessity for the killing of Ludlow Skinner, by their all concurring in telling you that the shot was fired when his back was turned."

Are they going to insist now that Skinner was shot with his side towards Haywood when their associate, Mr. Woodard, is committed to the back? I always thought that in a partnership, one partner could bind another, but it seems not to be so here. When Mr. Gilliam laid down the doctrine of homicide, I felt that I knew nothing of law, but I felt that I was in the presence of a master. But I think I do know something about the law of partnership, and I always thought, there, the doctrine was that one partner could bind another. But not so on this prosecution.

I want to call your attention again to the situation. Skinner has knocked Haywood down with left hand and backed off this way (indicating). Dr. Knox says that the bullet hit him and ranged down and backwards. So he could not have been in any other than in this position (indicating). I was

not surprised at their putting him in any possible position after the one Mr. Gilliam put him in. He could not have received his wound in position every State's witness has placed him.

Let us follow Mr. Gilliam further in this matter, though I don't want to be tedious. Mr. Gilliam says there was no need for the first shot. That constitutes Mr. Gilliam's argument, and the first witness he brings up to prove that the second shot struck him is Mr. Fuller, who says that his back was to him, and he puts him where no other witness puts him, beyond the car track. I don't believe that Jones Fuller came here and lied, but I think he is mistaken. He is, or two hundred others are. Is there any other man who puts him even anywhere near the west rail when the second shot was fired? The furthest out is half way. Is Jones Fuller mistaken? Yes, or there is no reliance in human testimony. And yet every witness brought here contradicts Jones Fuller.

Now, what about Mr. Jones Fuller's conduct? I have nothing but admiration for him. I am proud to be called a friend of the Fullers; there was never a man living I loved more than I did Judge Fuller, his father; I love Jones, too. But Jones Fuller is a boy and he has, as I said before, exaggerated notions of chivalry. He was trying to prevent Miss Pace from being subjected to the torture of being brought into court. And what has he done? In his thoughtlessness he entered into an agreement to barter away the life or liberty of Ernest Haywood to spare a woman the trouble of coming here. Did he do it through any desire to injure Ernest Haywood? No, he did it through thoughtlessness, alone. But my friends over there, the attorneys for the prosecution, can not claim the same excuse, because they have grown hoary in the service of the law, and they knew what it meant. They knew the full magnitude of shutting out this testimony. I pardon Jones Fuller, and I pity the older lawyers who ad-

vised him to do it. I have no censure for him. But Jones Fuller's sentimentality, and their zeal to convict, would have cost Ernest Haywood his life or liberty, if these other witnesses had not been present.

They have asked his Honor to *nolle prosequi* their count for murder in the first degree. And here is the most startling proposition I ever heard of from a lawyer. It comes from Mr. Gilliam. Mr. Gilliam, in arguing this case to you, said he represented the private prosecution and the State, and makes this assertion: "He provoked the blow to shoot, and shot." Then I ask Mr. Gilliam how could he, as an honest man, *nolle prosequi* the first count for murder? How could he keep in his pocket the money of the people who employed him, and acquit the defendant of the charge of murder? He was simply employed by these gentlemen to prosecute Ernest Haywood. He comes here and states to you that Ernest Haywood provoked that blow to shoot, and shot, which makes it murder in the first degree. Then how can Mr. Gilliam tell his Honor that he has nothing to offer the jury for murder in the first degree? How can he make this argument?

They say it is a lie that the little boy conjured up in his imagination when he says that this man jumped back and put his hand on his hip. Let us consider.

(Reads from evidence of W. R. Warren, a witness for the State.)

"What was Skinner doing? A. When he came out from behind the carriage?"

"Q. Yes. A. When I first saw him, I saw a glimpse of a man through the wheels, his legs, coming out that way, and when he got nearer I saw him have his hand on his hip, running or rather going out in that direction."

"Q. Describe exactly where his hand was? Tell where his hand was, and describe where he was? A. Right there on his hip."

That is between the first and the second shots. Warren is their witness. They have invoked the defendant's witnesses to prove our guilt. Let us see if we can not invoke some of theirs to prove our innocence. Between the first and the second shot he saw him with his hand on his hip coming from behind the carriage. What does that mean? Either he was trying to draw his pistol, as Haywood had a right to presume, or he had been hit and the pain forced his hand to his hip. Mr. Warren, who is certainly not a favorable witness to us, saw him coming from behind the carriage with his hands to his hip, just exactly as the little boy and Ned Barnes testified.

Gentlemen of the jury, why was his hand on his hip? He was either reaching for his pistol, in which case Haywood had a right to shoot him, or his hand was there on account of the pain. Then what becomes of their theory that the second shot was the fatal one? I want them to explain to you what his hand was doing at his hip before the second shot. The evidence from the State's witness, Warren, who was standing out in the street where he could see every movement of the parties. I want the gentlemen to tell me what, after the first shot, he was doing with his hand on his hip, unless he was trying to draw his pistol or unless he had been struck?

(Reads from testimony of W. M. Thompson.)

"Q. Now, Mr. Thompson, was your attention attracted by anything, and if so what was it? A. Yes, sir; I heard the reports of two pistols and on looking up I saw smoke down at the southern end of the postoffice, and saw several men there, and there seemed to be a state of consternation and excitement. On looking to the left I saw a gentleman in the street bareheaded, with his left hand on his hip and his right hand across his breast as well as I can recollect, in a stooping posture, seemed to be trying to steady himself and evidently trying to run."

Gentlemen of the jury, let me suggest to you one of the

most pertinent questions here. Where was Mr. Skinner between the time he left the post-office and the time Mr. Haywood shot him? Now, Mr. Lindsey testified that they came out of the post-office door together, and he went up and crossed Martin street before he heard the shot. Little Walter Thomas was asked what Mr. Skinner was doing, and he said he was there talking to somebody and he didn't know who he was. That accounts for where he was. He was talking to somebody. Talking to whom? We don't know. Where is that man? The prosecution may know. Was it one of Skinner's associates; he was talking to him? How do we know that here is not another witness whose voice is hushed? Everybody friendly to Mr. Skinner has closed their mouths to us, but God in heaven, they opened their ears; they heard much, but they told nothing. Now I ask you who was the man that stood on the sidewalk and talked to Mr. Skinner? He was a friend of his. But, like the spirits of the air, he is "upon the earth, and is not of it." He has disappeared; who was he?

Again I ask you what was Mr. Skinner waiting there for? We know what Ernest Haywood was there for, because we find Ernest Haywood in this court-house attending to business, and he had to pass that point to go to his office. Mr. Skinner's place of business is in an opposite direction from where he is found with Mr. Ernest Haywood. What was Ludlow Skinner doing at the point where he met Ernest Haywood? Somebody knows, somebody knows. So far as the purposes of this trial are concerned, Mr. Ludlow Skinner might as well have been dead months and months ago; not a word escaped anybody's lips as to what he was doing at this spot. His place of business was beyond. If he had gone to it and not have waited for Haywood, he would be living now. But we find him in a place where apparently he had no business, with a pistol in his pocket; we find him with a pistol in his pocket, seeking an altercation, striking the de-

fendant in the face. An insult if offered. Why? They know. Why? They know the relations between them. Why should they fear to let truth and justice in? Are they afraid that if they told, the State of North Carolina would say, "Go, you are free." Are they afraid? Why? Of all his business associates, of all his friends, you can't find one who comes here to say why Skinner was at the south end of the southern steps of the post-office. Why are they silent? Is it because it would exculpate Ernest Haywood? Does truth desire to conceal anything? No. What lives in the shadows? A lie. Where does truth live? In God's sunlight.

Now, gentlemen of the jury, I have but a few words more and I am done. I ask you to go over this testimony carefully and cautiously. In conclusion I have a word or two to say and I say it from a sense of duty.

This case has not been conducted upon the high plane its magnitude demanded. The methods adopted are not fit for a great cause. The great State in which we live has not been heard here, but instead, justice has been vexed by the clamor of persecution, crying for vengeance, vengeance, which the great God has said "Is mine alone." May He show more mercy to these cruel pursuers than they have shown to Ernest Haywood. In this wild, mad hunt, the living they have not spared. Names and reputation that honor manhood have been assailed and besmirched, and the attempt made to make them things for gibes and scorn. The dead, their own dead, they, also, have not spared. They would write across the escutcheon of one of our best families, the word "Coward"—a word that "out-venoms all the worms of Nile," and which withers and blisters all that it, justly, touches. They would make poor Ludlow Skinner die running. In the name of the shades of his great family, I here enter my solemn protest, and say to them that "Our hares, not our men, die flying." And I ask you to take the foul imputation from his name.

On the 26th day of June, 1862, I followed the grandest one of them across the field of Mechanicsville, and saw him pour his life's blood, a rich libation, upon the altars of truth and manhood.

No, gentlemen, the Skinners are not cowards. Take back, oh, take back, the cruel imputation. From the heights of Heaven, my friend, my comrade, my commander, Major Trim Skinner, cries shame! shame!

Gentlemen of the jury, my task is done. You will soon have my client in your charge. Take him, scrutinize him, deal with him as you would be dealt with, and finding no fault in him on account of anything testified to before you, lift him up in your arms, bring him back into the presence of his Honor, and give him back to freedom and his grey-haired old mother, whose last words on earth will syllable a blessing upon your heads.

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Day, W. H.

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